

**CITY <<RESOLUTION/ORDINANCE>> ADOPTING  
INTERLOCAL TERMS AND CONDITIONS RULE  
TO TRANSFER DEVELOPMENT RIGHTS**

A <<RESOLUTION/ORDINANCE>> ADOPTING THE WASHINGTON STATE DEPARTMENT OF COMMERCE INTERLOCAL TERMS AND CONDITIONS RULE BY REFERENCE FOR TRANSFERRING DEVELOPMENT RIGHTS FROM COUNTY DESIGNATED SENDING AREAS TO CITY DESIGNATED RECEIVING AREAS CONSISTENT WITH THE REGIONAL TRANSFER OF DEVELOPMENT RIGHTS PROGRAM.

WHEREAS, the transfer of development rights (TDR) is one tool available to Washington communities to encourage the preservation of working agricultural and forest land while also promoting higher-density, infill development within incorporated cities, consistent with the Washington State Growth Management Act (GMA), Chapter 36.70A RCW, and as provided in the Regional Transfer of Development Rights Program, Chapter 43.362 RCW; and

WHEREAS, the Washington State Legislature affirmed the regional TDR program in 2009 by directing the Washington State Department of Commerce to establish a regional TDR program in Central Puget Sound;

WHEREAS, to further City goals in City <<insert citations for policies/codes>>, it is important to preserve working agricultural and forest land and land whose conservation meets other state and regionally adopted priorities; and

WHEREAS, RCW 43.362.050 authorizes cities in central Puget Sound to adopt by reference interlocal agreement terms and conditions adopted by the Washington State Department of Commerce in Chapter 365-198 WAC in lieu of an interlocal agreement to transfer development rights from a county to a city in central Puget Sound.

THE CITY COUNCIL OF <<CITY NAME>>, WASHINGTON, DOES RESOLVE AS FOLLOWS:

OR

THE CITY COUNCIL OF <<CITY NAME>>, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. The City Council supports the transfer of development rights from sending areas designated by the county under its TDR program consistent with the Washington State Growth Management Act (GMA), Chapter 36.70A RCW, and as provided in the Regional Transfer of Development Rights Program, Chapter 43.362 RCW.

Section 2. The City hereby adopts by reference the interlocal terms and conditions as set forth in WAC 365-198-040 and 060 as follows:

(a) The City has adopted policies or regulations for receiving areas per attached ordinance(s) or resolution(s);

(b) Upon good faith consultation with the transferring county, and the county from within which the city is located, the City has designated receiving areas in the City within which transferable development rights or development rights credits may be used per attached ordinance(s) or resolution(s);

(c) Upon good faith consultation with the transferring county, and the county from within which the city is located, the City has adopted receiving area ratio or ratios for the transferable development rights or development rights credits to be received per attached ordinance(s) or resolution(s);

(d) The City, in consultation with the county from within which the City is located and the transferring county, shall develop a process to notify the transferring county when it has approved the use of transferable development rights or development rights credits for a specific project in the designated receiving area to allow the transferring county to track and extinguish credits as they are used. For purposes of this <<resolution/ordinance>>, a city's approval under this subsection occurs when the City planning department has issued the first building permit for a project using development rights credits. Prior to development approval, the City shall consult with the transferring county to ensure the development rights credit or credits proposed for development use in the designated receiving area are valid.

(e) The City shall work with the transferring county and the Washington State Department of Commerce to identify performance measures consistent with [RCW 43.362.070](#) to report to the transferring county and the Department of Commerce

(f) The county and City shall establish an evaluation and monitoring program based on quantitative and qualitative performance measures developed by the department for monitoring the regional transfer of development rights program under [RCW 43.362.070](#).

(g) The county and City shall enter into a dispute resolution process through mediation, with an agreed upon mediator and process, if agreement cannot be reached regarding interpretation or implementation of any terms and conditions in this <<resolution/ordinance>>. The parties shall use the mediation process in good faith to attempt to come to agreement early in the process, and prior to any appeals or litigation that they might otherwise be entitled to bring.

(h) The City may repeal the provisions of this chapter adopted by reference upon 90 days' written notice by the transferring county to the cities or towns or by cities and towns to the transferring county if:

- (1) The City's development regulations allowing the use of development rights credits, or the provisions of the county's development regulations allowing transfer of development rights to cities are held invalid by any court of competent jurisdiction in a final judgment no longer subject to appeal; or
- (2) The county or City materially defaults in the performance of the obligations as set forth in provisions of this <<resolution/ordinance>> , and fails to cure the default within thirty (30) days' of receipt of written notice from the county, city or town.

(i) A city or town's repeal of the terms and conditions in this <<resolution/ordinance>> shall not affect the use of development rights credits previously certified by the county. Development credits certified by the county prior to repeal by the city or town that have not been used in the city or town's receiving area may be used in the county's or another city or town's designated receiving area.

(j) The City shall indemnify and hold harmless the transferring county and its officers, agents and employees or any of them from any and all claims, actions, suits, liability, loss, costs,

expenses, and damages of any nature whatsoever, by reason or arising out of any negligent action or omission of the City, its officers, agents, and employees, or any of them, in performing obligations pursuant to this <<resolution/ordinance>>. In the event that any suit based upon such a claim, action, loss, or damage is brought against the county, the City shall defend the same at its sole cost and expense, provided that the transferring county retains the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment be rendered against the transferring county and its officers, agents, employees, or any of them, or jointly against the city or town and transferring county and their respective officers, agents, and employees or any of them, the city or town shall satisfy the same.

(k) The City acknowledges that if the claims, actions, suits, liability, loss, costs, expenses and damages referenced in subsection (j) of this section are caused by or result from the concurrent negligence of the city or town, its agents, employees, and/or officers and the county, its agents, employees, and/or officers, the provisions of this <<resolution/ordinance>> shall be valid and enforceable only to the extent of the negligence of each party, its agents, employees and/or officers.

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*Optional terms that a city or town may adopt verbatim or by reference to Chapter 365-198 WAC are:*

*(l) Upon good faith consultation with the transferring county, the city or town shall identify the sending areas from which the city or county agrees to accept transferable development rights.*

*(m) The city or town has estimated the capacity for development with transferable development rights (or development rights credits) from the transferring county per attached ordinance(s) or resolution(s).*

*(n) The city or town shall establish and operate a transfer of development rights bank to purchase, sell, and hold development rights.*

<<SIGNATORY PROVISIONS AND DATE>>